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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,777	05/27/2004	Anthony A. Harrington	04-0016A	3776
44702	7590	06/23/2006	EXAMINER	
OSTRAGER CHONG FLAHERTY & BROITMAN PC 250 PARK AVENUE, SUITE 825 NEW YORK, NY 10177			HOLZEN, STEPHEN A	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/709,777		HARRINGTON ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Stephen A. Holzen		3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 35-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-21 is/are allowed.
- 6) ☒ Claim(s) 1-7, 35-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/5/2006</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments filed 4/3/2006 have been fully considered but they are not persuasive..

2. In response to applicant's arguments, the recitation "main-deck" and "overhead cabin" have not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). The phrase "overhead" in the body of the claims does not differentiate from the prior art, where there is no reference point claimed to determine what "overhead cabin" means. The term overhead cabin is broad enough to read on a cabin in the lowest most portion of the fuselage, when someone is standing underneath the craft. Applicant's amendment served to broaden the claims and did not clarify the invention or limit the invention with the amendment. The fact that applicant has amended in the word "passenger" is of no consequence since this is merely the intended use of the deck, holding no patentable weight.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Rezag et al (5,074,496).

Re – Claims 1, 3, 7, and 41: Rezag et al discloses a upper and lower cabin having a single gantry-lifting device (see Figure 3) having an object carrier (9E<sub>1</sub>), said object carrier having at least one restraint member (the locking plates), said device having a “lift device” (9E), where the device can carrier a galley cart along three separate axis. The applicant should appreciate that the phrase “overhead cabin” as used in the claims is broad enough to read on any deck within the aircraft (upper, middle, lower) so long as it is “overhead” a person standing underneath the belly of the aircraft.

Re – Claim 2: Applicant should appreciate that the lower deck is considered a “main galley deck” since (1) it qualifies as a deck (2) houses and receives the majority of the galley carts. The main passenger cabin qualifies as the “upper cabin” since it is a cabin that is above the “main galley deck”. The fact that applicant has amended in the word “passenger” is of no consequence since this is merely the intended use of the deck, holding no patentable weight.

Re – Claim 5: Applicant merely claims that the device is manually operable. The examiner asserts that while Rezag is essentially controlled by a computer, the control unit is manually programmable and therefore the examiner asserts that the device is broadly “manually operative”; although no more “manual labor” is used than to program the control unit.

Re – Claim 6: Rezag et al discloses an unloading element as illustrated in Figures 11-13)

It should be appreciated that the applicant's functional language in the claims do not serve to impart patentability. While features of an apparatus may be recited either structurally or functional, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. Apparatus claims cover what a device is, not what a device does. A claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior apparatus teaches all the structural limitation of the claims. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d, 1429, 1431-.2 (Fed. Cir. 1997); Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990); Ex parte Masham, 2 USPQ 2d 1647 (Bd. Pat. App. & Inter. 1987).

5. Claims 35-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Rezag et al (5,074,496). Rezag discloses a system for supplying galley carts to a main

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passenger cabin from a lower main galley cabin via a controllable automatic device provided in the baggage compartment of the aircraft and cable of seizing each of the galley carts in the container by a gripping means. The control unit is "manual" in as much as it is programmable by a human. Figure 3 illustrates that the lifting gantry device is capable of operating in any of the three dimensions and that carts are arranged such that they can be moved and aligned in any direction. (See Col. 5, lines 18-21, 26-29, 36-39, 47-53; Col. 6, lines 19-24, 31-33; Col. 9, lines 25-27; Figures 3 and 15a-c). The fact that applicant has amended in the word "passenger" is of no consequence since this is merely the intended use of the deck, holding no patentable weight. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rezag in view of Rasmussen (6,988,760). Rezag does not disclose a screw, gear and pulley mechanism for lifting. FIG. 187 shows a perspective view of another embodiment of a

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system for vertically moving one or more beds using cables and a rack and gear lifting assembly. It would have been obvious to use a gear lifting assembly similar to that of Rasmussen in the lifting device of Rezag for the purpose of increasing lifting control.

8. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rezag in view of Sankrithi (6,305,643). Rezag discloses every aspect of the present invention as described above except wherein a person can move between the upper and lower cabins via a ladder. Sankrithi discloses that it is known to install a ladder within the shaft of the lift and gantry device such that one can enter the main galley cabin (see Figure 7). It would have been obvious to one having ordinary skill in the art, at the time the invention was made to employ the ladder of Sankrithi in the device of Rezag in order to allow maintenance within the main galley cabin.

#### ***Allowable Subject Matter***

9. Claims 8-21 are allowed.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A. Holzen whose telephone number is 571-272-6903. The examiner can normally be reached on M-F 8:30-5:00.




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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sah



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